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 United States of America

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 08CR1444DMS
	)	
Plaintiff,	)	DATE: June 13, 2008
	)	TIME: 11:00 a.m.
v.	)	Before Honorable Dana M. Sabraw
	)	
JOSE ALFREDO AGUILAR-PEDRASA,	)	UNITED STATES' MOTIONS FOR:
	)	
Defendant(s).	)	(1) RECIPROCAL DISCOVERY
	)	(2) FINGERPRINT EXEMPLARS;
	)	AND
	)	(3) LEAVE TO FILE FURTHER
	)	MOTIONS
	)	
	)	TOGETHER WITH STATEMENT OF
	)	FACTS AND MEMORANDUM
	)	OF POINTS AND AUTHORITIES

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,  
 Karen P. Hewitt, United States Attorney, and Aaron B. Clark, Assistant U.S. Attorney, and hereby  
 files its Motions in the above-referenced case. Said Motions are based upon the files and records  
 of this case together with the attached statement of facts and memorandum of points and  
 authorities.

1 DATED: May 30, 2008.

2 Respectfully submitted,

3 KAREN P. HEWITT  
4 United States Attorney

5 s/ Aaron B. Clark  
6 AARON B. CLARK  
7 Assistant United States Attorney

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 United States of America

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

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v.	)	
	)	
JOSE ALFREDO AGUILAR-PEDRASA,	)	UNITED STATES' STATEMENT OF
	)	FACTS AND MEMORANDUM OF
Defendant(s).	)	POINTS AND AUTHORITIES
_____	)	

**I**

**STATEMENT OF THE CASE**

The Defendant, Jose Alfredo Aguilar-Pedrasa (hereinafter "Defendant"), was charged by a grand jury on May 7, 2008 with violating Title 8 U.S.C. 1326(a) and (b), Deported Alien Found in the United States. Defendant was arraigned on the Indictment on May 8, 2008, and entered a plea of not guilty.

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## II

**STATEMENT OF FACTS****A. IMMIGRATION HISTORY**

Defendant is a Mexican citizen who was ordered deported after a hearing before an immigration judge on January 27, 2000. He was most recently removed from the United States on February 12, 2008.

**B. RAP SHEET SUMMARY CHART**

CONVICT DATE	COURT OF CONVICTION	CHARGE	TERM
12/29/2004	CASC Los Angeles	HS 11351.5 – Poss/Purchase Cocaine Base for Sale	5 Years
2/19/2002	CASC San Fernando	VC 12500(A) – Driving w/o License	6 Days
5/4/2001	CASC Los Angeles	HS 11351.5 – Poss/Purchase Cocaine Base for Sale	180 Days
12/6/02	CASC Los Angeles	HS 11351.5 – Poss/Purchase Cocaine Base for Sale	3 years

**C. INSTANT OFFENSE**

On March 27, 2008, Border Patrol Agent Jamison Walthall was performing line watch duties in an area near Campo, California, approximately 20 miles east of the Tecate, California, Port of Entry and approximately ½ mile north of the International Border with Mexico. In the course of his duties, Agent Walthall responded to a seismic intrusion device in the area. When he arrived at the area of the device activation, Agent Walthall found fresh footprints, which he followed. He ultimately found seven people attempting to hide in surrounding brush. Defendant was among the seven.

1 As Agent Walthall approached the seven people, he identified himself as a Border Patrol  
2 Agent and questioned each person regarding their citizenship and immigration status. Defendant  
3 freely admitted he was a Mexican citizen with no documents allowing him to be in the United  
4 States legally. Defendant was subsequently arrested and brought to the Campo Station for  
5 processing.

6 At the station, Defendant elected to invoke his Miranda rights.

### 7 III

#### 8 MOTION FOR RECIPROCAL DISCOVERY

9 The United States hereby moves for reciprocal discovery from Defendant. To date  
10 Defendant has not provided any. The United States, pursuant to Rule 16 of the Federal Rules of  
11 Criminal Procedure, requests that Defendant permit the United States to inspect, copy, and  
12 photograph any and all books, papers, documents, photographs, tangible objects, or make copies  
13 of portions thereof, which are within the possession, custody or control of Defendant and which  
14 Defendant intends to introduce as evidence in his case-in-chief at trial.

15 The United States further requests that it be permitted to inspect and copy or photograph  
16 any results or reports of physical or mental examinations and of scientific tests or experiments  
17 made in connection with this case, which are in the possession or control of Defendant, which  
18 Defendant intends to introduce as evidence-in-chief at the trial, or which were prepared by a  
19 witness whom Defendant intends to call as a witness. Because the United States will comply with  
20 Defendants' requests for delivery of reports of examinations, the United States is entitled to the  
21 items listed above under Rule 16(b)(1) of the Federal Rules of Criminal Procedure. The  
22 Government also requests a written summary of the names, anticipated testimony, and bases for  
23 opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the  
24 Federal Rules of Evidence.

25 The United States also requests that the Court make such order as it deems necessary under  
26 Rules 16(d)(1) and (2) to ensure that the United States receives the discovery to which it is entitled.

In addition, Rule 26.2 of the Federal Rules of Criminal Procedure requires the production of prior statements of all witnesses, except a statement made by defendant. This rule thus provides for the reciprocal production of Jencks statements. The time frame established by the rule requires the statement to be provided after the witness has testified. To expedite trial proceedings, the United States hereby requests that Defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial to be set by the Court. Such an order should include any form in which these statements are memorialized, including but not limited to, tape recordings, handwritten or typed notes and/or reports.

#### IV

#### **MOTION FOR FINGERPRINT EXEMPLARS**

As part of its burden of proof at trial, the Government must prove beyond a reasonable doubt that Defendant is the same person who was previously deported from the United States. Defendant's warrants of deportation and related documents bear fingerprints to verify his identity. In order to meet our burden of proof, the United States anticipates calling a certified fingerprint examiner to obtain fingerprint exemplars from Defendant and compare those with the fingerprints on the immigration documents.

Defendant has no privilege against providing fingerprint exemplars. The Fifth Amendment privilege is limited to communications or testimonial evidence. Schmerber v. California, 384 U.S. 757, 763-64 (1966). The Government's use of identifying physical characteristics, such as fingerprint exemplars, does not violate a defendant's Fifth Amendment rights. See, e.g., United States v. De Palma, 414 F.2d 394, 397 (9th Cir. 1969); Woods v. United States, 397 F.2d 156 (9th Cir. 1968). Compare United States v. Jackson, 886 F.2d 838, 845 n.8 (7th Cir. 1989) ("There is no doubt that requiring a defendant to give a handwriting specimen does not violate his fifth amendment privilege against self-incrimination since the privilege reaches only compulsion of a defendant's communication."). Accordingly, the Court

1 should order that Defendant provide fingerprint exemplars to the Government's fingerprint  
2 expert.

3 **V.**

4 **LEAVE TO FILE FURTHER MOTIONS**

5 Should new information or legal issues arise, the United States respectfully requests the  
6 opportunity to file such further motions as may be appropriate.

7 **VI.**

8 **CONCLUSION**

9 For the foregoing reasons, the Government respectfully requests that its motions for  
10 reciprocal discovery, fingerprint exemplars and leave to file further motions be granted.

11 DATED: May 30, 2008.

12 Respectfully submitted,

13 KAREN P. HEWITT  
14 United States Attorney

15 s/ Aaron B. Clark  
16 AARON B. CLARK  
17 Assistant United States Attorney  
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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Case No. 08CR1444DMS

Plaintiff

CERTIFICATE OF SERVICE

v.

JOSE ALFREDO AGUILAR-PEDRASA,

Defendant(s).

IT IS HEREBY CERTIFIED THAT:

I, AARON B. CLARK, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of UNITED STATES' MOTIONS on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

1. Robert Swain

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 30, 2008.

s/ Aaron B. Clark  
AARON B. CLARK